

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:07-HC-2101-BR

UNITED STATES OF AMERICA

v.

JEFFREY NEUHAUSER

RENEWED MOTION TO DISMISS
AND RELEASE

The Respondent in the above-captioned case, by and through undersigned counsel, moves this Honorable Court for an order dismissing the pending 18 U.S.C. § 4248 proceeding.

1. In 2006, the United States certified Graydon Comstock and four other respondents for civil commitment pursuant to provisions of the Adam Walsh Act, 18 U.S.C. § 4248. *See United States v. Comstock* (No. 5:06-HC-2195-BR), *United States v. Catron* (No. 5:06-HC-2202-BR), *United States v. Matherly* (No. 5:06-HC-2205-BR), *United States v. Revland* (No. 5:06-HC-2212-BR), *United States v. Vigil* (No. 5:06-HC-2206-BR). These five respondents moved to dismiss on several grounds, and proceedings were consolidated.

On September 7, 2007, this Court granted respondents' motion to dismiss on two constitutional grounds. First, this Court held that Congress lacked constitutional authority to enact 18 U.S.C. § 4248. Second, this Court held that the commitment procedures violate due process. This Court rejected respondents' argument that § 4248 commitment constituted criminal and not civil proceedings and did not address respondents' additional contention that the statute violates constitutional guarantees of equal protection.

The government appealed the district court's order, challenging both constitutional grounds cited by the district court. Respondents' brief raised the equal protection argument not reached by the district court, and the government addressed that argument in its reply brief. The Fourth Circuit affirmed the district court's order on the ground that Congress lacked the constitutional authority to enact 18 U.S.C. § 4248. The Fourth Circuit did not reach the other issues raised in the appeal.

The United States Supreme Court granted certiorari and, on May 17, 2010, the Supreme Court reversed the Fourth Circuit's opinion and remanded the case to the Fourth Circuit. The Supreme Court opinion stated, "We do not reach or decide any claim that the statute or its application denies equal protection of the laws, procedural or substantive due process, or any other rights guaranteed by the Constitution. Respondents are free to pursue those claims on remand, and any others they have preserved."

On June 8, 2010, the Fourth Circuit issued an order granting the parties' joint motion for expedited review. The order directed the parties to address, in addition to other preserved claims, the following issue: "Whether 18 U.S.C. § 4248 (2006) or its application denies equal protection of the laws, procedural or substantive due process, or any other rights guaranteed by the Constitution." The government's opening brief is due by June 22, 2010 and the respondents' brief is due by July 6, 2010.

2. The above-captioned case raises identical legal issues to *United States v. Comstock*, No. 5:06-HC-02195-BR. Respondent incorporates by reference the arguments made in Mr. Comstock's February 15, 2007 (D.E.12) and March 30, 2007 (D.E. 19) motions to dismiss and notes this Court's September 7, 2007 (D.E. 32) order granting those motions.

Respondent respectfully requests that this Court dismiss the action against him and order that Respondent be immediately released. Undersigned counsel has contacted counsel for the government who opposes the relief sought in this motion.

3. At this time, Respondent does not request a hearing on the merits of his case. In the event this Court conducts hearings under 18 U.S.C. § 4248, Respondent respectfully requests that, to the extent possible, this Court reserve his place in certification order if and when a hearing on the merits is calendared.

Respectfully requested this 23rd day of June, 2010.

THOMAS P. McNAMARA
Federal Public Defender

/s/ Jane E. Pearce
JANE E. PEARCE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon:

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by electronically filing the foregoing with the Clerk of Court on June 23, 2010, using the CM/ECF system which will send notification of such filing to the above.

This the 23rd day of June, 2010.

/s/ Jane E. Pearce
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